

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Joseph Perez,

Case No. 2:21-cv-01342-JAD-DJA

Plaintiff

V.

Charles Daniels, et. al.,

Order Dismissing and Closing Case

Defendants

Plaintiff Joseph Perez brings this civil-rights lawsuit to redress constitutional violations he claims he suffered while incarcerated at High Desert State Prison. On July 19, 2021, this court ordered the plaintiff to either pay the \$402 filing fee or file a complete *in forma pauperis* application by September 17, 2021.¹ That deadline expired without a new application or payment of the filing fee.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.² A court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.³ In determining whether to dismiss an action

¹ ECF No. 2.

²⁰ ² *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

²¹ ³ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

1 on one of these grounds, the court must consider: (1) the public's interest in expeditious
 2 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
 3 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
 4 availability of less drastic alternatives.⁴

5 The first two factors, the public's interest in expeditiously resolving this litigation and the
 6 court's interest in managing its docket, weigh in favor of dismissal of the plaintiff's claims. The
 7 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
 8 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
 9 ordered by the court or prosecuting an action.⁵ A court's warning to a party that its failure to
 10 obey the court's order will result in dismissal satisfies the fifth factor's "consideration of
 11 alternatives" requirement,⁶ and that warning was given here.⁷ The fourth factor—the public
 12 policy favoring disposition of cases on their merits—is greatly outweighed by the factors
 13 favoring dismissal.

14 IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** without prejudice
 15 based on the plaintiff's failure to file an application to proceed *in forma pauperis* or pay the
 16 filing fee as ordered. The Clerk of Court is directed to **ENTER JUDGMENT** accordingly and
 17 **CLOSE THIS CASE. No other documents may be filed in this now-closed case.** If Joseph

21⁴ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
 22 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

23⁵ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

⁶ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

⁷ ECF No 2 at 3.

1 Perez wishes to pursue his claims, he must file a complaint in a new case, and he must either pay
2 the \$402 filing fee or file a complete *informa pauperis* application in that new case.

3 Dated: October 13, 2021

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5 U.S. District Judge Jennifer A. Dorsey

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